IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 1060 of 2007(A)

OS.63/2005 of M.C.,PARAPPANANGADI
.....

PETITIONER:

P.K. VARGHESE, S/O.PYNEDATH KUNJUVAREETH
AGED 67, RESIDING NEAR RAILWAY STATON
CALICUT, KACHERI DESOM, P.O. WEST HILL,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.HARISH R. MENON

RESPONDENTS:
---

1. KATHEESA KUTTY UMMA,
W/O.CHATTAPARAKKAL KUNJAVARANKUTTY,
RESIDING AT CHATTASPARAKKAL HOUSE,
KOHINOOR, PANAMBARA P.O, THENHIPALAM.

2. MUHAMMED KUTTY, S/O.KUNJAVARANKUTTY,
RESIDING AT CHATTAPARAKKAL HOUSE,
KOHINOOR, PANAMBARA P.O., THENHIPALAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

M.Sasidharan Nambiar,J.

W.P.(C) No.1060 of 2007

Dated, this the 10th day of January, 2007

JUDGMENT

Petitioner is plaintiff and respondents defendants in O.S.63/05 on the file of Munsiff Court, Parappanagadi. A suit for injunction was filed restraining respondents from trespassing into the plaint schedule property over item No.2 of plaint schedule property. It was contended by respondents that they have got a right of way over the said property. Petitioner filed I.A.447/05 an application under Order XXXIX Rule 1 C.P.C seeking an order of temporary injunction. Under Ext.P1 order, learned Munsiff finding that petitioner did not succeed in establishing a prima facie case dismissed the application. It was challenged before Sub court, Tirur in CMA 22/00. Under Ext.P2 order learned Sub Judge confirmed Ext.P1 order and dismissed the appeal. It is challenged in this

petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner was heard.

3. Learned Munsiff and learned Sub Judge considered the question whether petitioner has a prima face case and whether balance of convenience is in favour of petitioner and whether any irreparable injury will be caused if no order of injunction is granted. Finding that prima facie respondents have a right to use the way through plaint schedule property, learned Munsiff and learned Sub Judge found that petitioner has no prima facie case and therefore balance of convenience is not in favour of petitioner to grant an order of injunction and dismissed the application as well as appeal. On going through Exts.P1 and P2 orders, I find no infirmity in the orders warranting interference in exercise of extra ordinary jurisdiction of this court under Article 227 of Constitution of India. The question whether

defendants have a right of way over item No.2 of plaint schedule property is to be decided by learned Munsiff on the evidence to be let in. Learned Munsiff to decide that question untrammeled by any observations made in Exts.P1 and P2.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

Tpl/-